



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

June 18, 1958

Honorable Joe Tunnell
County Attorney
Canton, Texas

Opinion No. WW-456

Re: May the land owner
pay the delinquent taxes
on the right-of-way
strip deeded to the
County and thereby free
said strip from the
Constitutional Tax Lien,
without paying the de-
linquent taxes on the
whole tract, and related
questions.

Dear Mr. Tunnell:

You request the opinion of this office upon two ques-
tions as stated in your letter, as follows:

"QUESTION NO. ONE: Can the Constitutional
Tax Lien for delinquent taxes be extinguished on
the right of way strip taken by the State without
extinguishing said lien as to the whole tract from
which the right of way strip is taken? Stated
differently, can the land owner pay the delinquent
taxes on the right of way strip deeded to the
County and thereby free said strip from the
Constitutional Tax Lien, without paying the
delinquent taxes on the whole tract?

"QUESTION NO. TWO: Can Van Zandt County,
Texas, pay the State, County or school taxes on
said right of way strip, or on the whole tract
from which said right of way tract is taken,
from any of the County funds?"

You state in your request that you have answered the
foregoing questions in the negative. Certainly your answer
to question no. 2 is correct, but your answer to question
no. 1 is subject to some qualifications. When the State
and County purchased a portion of the taxpayer's land for
the purpose of widening State Highway No. 64, the pre-
existing tax lien on that portion of the property purchased
became merged with the title of the State and County.
State vs. Moak et al, 146 Tex. 322, 207 S.W. 2d 894. The

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acquisition of this property was for a public purpose. Of course, this in no manner impaired the State's constitutional and statutory lien for the delinquent taxes due on the remaining portion of the land not acquired by the State and County, nor did it in any manner impair the owner's personal liability for the taxes.

We doubt if there is really any substantial impediment in the collection of the delinquent taxes against the property owner and the land if a tax suit should be filed against him, seeking foreclosure of the tax lien against the remaining portion of the property. This would certainly be true if there remained sufficient property to satisfy the taxes and thus discharge the tax lien. The enclosed Opinion No. WW-385 is in part relevant to your questions.

SUMMARY

Any pre-existing lien against real property acquired by the State and County for right-of-way purposes becomes merged with the title acquired by the State and County and is no longer enforceable in a tax suit to collect delinquent taxes thereon. The remaining property not acquired by the State and County is in no manner affected by the acquisition of a part of the land for highway construction which is for a public purpose, nor does it in any way impair the personal liability of the land owner for all delinquent taxes due upon all of the land. As a practical matter, if sufficient land remained to satisfy the taxes, if sold under tax foreclosure suit, no problem is presented.

Respectfully submitted,

WILL WILSON
Attorney General of Texas

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LPL:ba

APPROVED:

OPINION COMMITTEE

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REVIEWED FOR THE ATTORNEY GENERAL

By: W. V. Geppert